

REMARKS

Claims 1-7 are pending in the present application. In the Office Action, the Examiner rejected claim 7 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 7 has been amended to address the Examiner's rejection. Applicants request that the Examiner's rejection of claim 7 be withdrawn.

In the Office Action, claims 1-6 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Crisler in view of MacDonald, et al (U.S. Patent No. 5,537,416). The Examiner's remaining rejections are respectfully traversed.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. As admitted by the Examiner, Crisler fails to teach or suggest deciding which of a plurality of confirmation messages to transmit based on an information status flag indication contained in a received information message. To remedy this fundamental deficiency in the primary reference, the Examiner alleges that MacDonald teaches deciding which of a plurality of confirmation messages to transmit based on an information status flag indication contained in a received information message. Applicants respectfully disagree for at least the following reasons.

MacDonald is concerned with allocating received, repeated, and non-repeated data blocks to their correct relative positions within a receiver buffer without the need for numbering the data blocks. Corrupted acknowledgment signals may cause errors due to incorrect data block ordering in the receiving apparatus. Thus, MacDonald teaches that each transmitted information block may include a Repeat Flag that indicates whether the information block contains a repeated data block. According to MacDonald, a later information block is stored in the receiver buffer at a

first receiver buffer address only if the Repeat Flag of the later information block is set. This prevents a falsely repeated block from being incorrectly stored.

MacDonald does not, however, teach or suggest that the Repeat Flag is used to decide which of a plurality of confirmation messages to transmit. Thus, Applicants respectfully submit that Crisler and MacDonald, either alone or in combination, fail to teach or suggest deciding which of a plurality of confirmation messages to transmit based on an information status flag indication contained in a received information message.

Moreover, contrary to the Examiner's allegation in the FINAL Office Action, Applicants respectfully submit that the cited references do not contain any suggestion or motivation to modify the prior art to arrive at Applicants' claimed invention. On one hand, Crisler is concerned with reducing bit overhead of small packets in an SR-ARQ protocol. Crisler teaches that providing message-received or message-partially-received communications (collectively referred to as transmission acknowledgements) based on whether or not errors are detected in a received packet may reduce the bit overhead. See Crisler, col. 4, ll. 23-46. However, Crisler provides no suggestion or motivation for including an information status flag in the transmission acknowledgements, as suggested by the Examiner. In contrast, Crisler appears to teach away from the Examiner's proposed modification by teaching that it is desirable to reduce bit overhead associated with small packet transmission. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious.

McDonald, on the other hand, is concerned with preserving the ordering of received data blocks and, as discussed above, teaches that information blocks are stored in a receiver buffer at a first receiver buffer address only if the Repeat Flag of the later information block is set.

However, McDonald is completely silent with regard to an information status flag that may be used to decide which of a plurality of confirmation messages to transmit.

For at least this reason, Applicants respectfully submit that claims 1-6 are not obvious over Crisler in view of MacDonald because the cited references fail to teach or suggest all the limitations of the claimed invention and provide no motivation to modify the prior art to arrive at the claimed invention. Moreover, Crisler appears to teach away from the Examiner's proposed modification. Applicants respectfully request that the Examiner's rejections of claims 1-6 be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Date: 6/21/04

Respectfully submitted,



Mark W. Sincell, Ph.D.
Reg. No. 52,226
Williams Morgan & Amerson, P.C.
Customer ID No. 23720
10333 Richmond Avenue, Suite 1100
Houston, TX 77042
(713) 934-7000
(713) 934-7011 (Fax)

AGENT FOR APPLICANTS